

Before the
Copyright Royalty Judges
Washington, D.C.

In the Matter of)	
)	
Distribution of 2015)	Docket No. 17–CRB–0011–SD
Satellite Royalty Funds)	(2015)
)	

**MULTIGROUP CLAIMANTS’
OBJECTION TO PARTIAL DISTRIBUTION OF 2015
SATELLITE FUNDS TO CERTAIN
“ALLOCATION PHASE CLAIMANTS”**

Multigroup Claimants, pursuant to the Notice Requesting Comments to Partial Distribution of 2015 Satellite Royalty Funds, published April 17, 2017, by the Library of Congress, 82 Fed. Reg. 18160, hereby notifies the Copyright Royalty Board as follows:

Multigroup Claimants maintains no objection to the proposed distribution of 2015 satellite royalty funds to “Allocation Phase Claimants” *other than* to such groups as are referred to as the “Program Suppliers” and the “Devotional Claimants”.¹ Multigroup Claimants reasonably objects to

¹ The actual identity of the “Program Suppliers” and “Devotional Claimants” claimants do not appear in the Federal Register notice, nor do they appear in the *Motion of the Allocation Phase Parties for Partial Distribution of 2015 Satellite Royalty Fund*, filed February 17, 2017. Multigroup Claimants has no means to speculate about the claimants purportedly comprising the “Program Suppliers”, nor is there any indication that the self-proclaimed “Program Suppliers” is affiliated with the Motion Picture Association of America, a veteran participant. Multigroup Claimants presumes that the “Devotional Claimants” are such claimants as have most recently identified themselves as the “Settling Devotional Claimants” (“SDC”), but similarly has no means to confirm the same. Multigroup Claimants’ Objection to Partial Distribution of 2015 Satellite Funds to Certain “Allocation Phase Claimants”

any distribution to “Program Suppliers” and “Devotional Claimants” on the grounds that Multigroup Claimants has no means to determine the identity of the “Program Suppliers” or “Devotional Claimants”, but regardless, no such parties are “established claimants” capable of qualifying for a partial distribution of satellite royalties. Multigroup Claimants represents significant claims in the program suppliers and devotional programming categories, and for various royalty pools makes claim to the *majority* of devotional programming royalties. Multigroup Claimants is therefore an interested party.

The purported predecessor of the currently identified “Allocation Phase Claimants” was the “Phase I representatives”.² Although precedent in prior distribution proceedings required a Phase I representative to act on behalf of all claimants within such Phase I category,³ entities previously identifying themselves as representing the “Program Suppliers” and the “Devotional Claimants”⁴ have historically received and utilized advanced royalties to fund their own Phase II expenditures (currently known as

² See *Motion of the Allocation Phase Parties for Partial Distribution of 2015 Satellite Royalty Fund* at p. 1.

³ See Docket no. 2000-2 CARP CD 93-97, Order of August 31, 2000, at pp. 4-6.

⁴ As noted, Multigroup Claimants can make no determination regarding the claimants comprising either the “Program Suppliers” or “Devotional Claimants”, and can only speculate as to their identity because of claimants that have previously utilized the same legal counsel as are signatories to the *Motion of the Allocation Phase Parties for Partial Distribution of 2015 Satellite Royalty Fund*.

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“distribution phase”), and failed to distribute advanced royalties to any other Phase II claimants, thereby violating the edict of the Judges’ predecessors.

A. There is no means to determine the identity of the “Program Suppliers” or the “Devotional Claimants”, and no means to guarantee repayment of over-advanced royalties.

It is an interesting fact that nowhere within the *Motion of the Allocation Phase Parties for Partial Distribution of 2015 Satellite Royalty Fund* is the identity of the “Program Suppliers” or “Devotional Claimants” provided. As noted, Multigroup Claimants can only speculate as to their identity because of claimants that have previously utilized the same legal counsel as are signatories to the *Motion*, but such fact is far from dispositive. Obviously, the identity of such unidentified claimants affects both the reasonableness of an advance of sixty-percent of the 2015 satellite pool, as well as which claimants are the guarantors for repayment of any over-advanced royalties.

B. The Program Suppliers and the Devotional Claimants are not “Established Claimants” in the Satellite Proceedings, and per the Judges’ dictate the Judges are thereby *precluded* from awarding them a partial distribution.

The “Program Suppliers” and the “Devotional Claimants” (whoever they are) are necessarily composed of claimants that have *never* previously partaken in a Phase II satellite proceeding, and *never* been issued a final award of satellite royalties by the Copyright Royalty Board or its Multigroup Claimants’ Objection to Partial Distribution of 2015 Satellite Funds to Certain “Allocation Phase Claimants”

predecessors. On such grounds, such parties do not qualify as “established claimants”, a prerequisite for the advance distribution of retransmission royalties.

Notably this *identical* reasoning was recently the basis for the Judges disallowing the partial distribution of satellite funds to Independent Producers Group (“IPG”) for 1999-2009 satellite royalties. Despite IPG seeking a partial distribution of the *minimum* amounts that its only adversaries (MPAA-represented program suppliers and SDC) argued that IPG was entitled, and despite the vetting of all IPG-represented claimants through the claims challenge process for such satellite proceedings, the Judges *still* denied any partial distribution of satellite royalties to IPG.⁵ Specifically, after granting IPG’s motion for a partial distribution of *cable* royalties, the Judges stated:

“With respect to satellite royalties, the Judges agree with MPAA that IPG, whose claimants have not received a final allocation of satellite royalties, is not yet an established claimant representative with respect to satellite royalties. [fn. omitted]. As no IPG-represented claimants have received a final allocation of satellite royalties, the Judges have no basis for allocating an appropriate partial distribution amount, *even if they concluded that one were warranted*. Therefore, the Judges find that MPAA has raised a reasonable objection to IPG’s

⁵ See generally, *Order Granting In Part and Denying In Part IPG’s Motion for Partial Distribution of Program Suppliers’ Royalties* (Sept. 29, 2016), Docket nos. 2012-6 CRB CD 2004-2009 (Phase II), 2012-7 CRB SD 1999-2009 (Phase II) (the “*September 29 Order*”). The Judges awarded IPG an advance distribution of 2004-2009 cable royalties, acknowledging that IPG must be considered an “established claimant” for purposes of cable royalty distribution because IPG had already been awarded a final non-appealable distribution in the program suppliers category.

request for a partial distribution of satellite royalties and therefore the Judges **DENY** IPG's request with respect to satellite royalties."

See *September 29 Order* at pp. 10-11 (emphasis added).

Applying the foregoing holding to the current motion for partial distribution, none of the (possibly) multiple claimants that comprise the "Program Suppliers" or the "Devotional Claimants" have received "a final allocation of satellite royalties", and *even if the Judges concluded that a partial distribution were warranted, and even if adverse allocation phase parties concluded that a partial distribution were warranted*, the Judges have no basis for allocating an appropriate partial distribution.

When IPG previously sought a partial distribution of satellite royalties, both IPG and the Music Claimants brought to the Judges' attention that there had never been a litigated proceeding to determine the distribution of satellite royalties. *September 29 Order* at p. 7. As such, according to the logic advanced by the MPAA in opposition to IPG's motion to receive a partial distribution of satellite royalties, no party previously receiving advanced satellite royalties was an "established claimant", and no party was therefore entitled a partial distribution, if any interested party objected. *Id.*

At such time, IPG noted the contradictory fact that both the MPAA and SDC had previously been advanced satellite royalties against IPG's objection, Multigroup Claimants' Objection to Partial Distribution of 2015 Satellite Funds to Certain "Allocation Phase Claimants"

even when IPG merely sought safeguards that such royalties would not be used to fund Phase II purposes,⁶ and further noted the rather obvious fact that the MPAA argument necessarily foreclosed the MPAA (and others) from receiving future partial distributions of satellite royalties until a litigated proceeding concluded with a final allocation of satellite royalties. Id.

At its own peril, the MPAA did not recant the argument, and the Judges wholeheartedly embraced the MPAA's position that a party must be an "established claimant" in order to receive a partial distribution, and that to be an "established claimant" the claimant must have received a final allocation of the particular variety of royalties for which partial distribution is sought, i.e., cable versus satellite. Id. at pp. 10-11. Moreover, the Judges (through their silence) apparently rejected the position of IPG and the Music Claimants that if a party has successfully established the legitimacy of its represented claim in a particular category for a particular year, i.e., after the vetting of all its claims, it should nonetheless be deemed an "established claimant". Id. at p. 8.

⁶ *Order Granting Motion of Phase I Claimants for Partial Distribution*, Docket No. 14-CRB-0007 CD (2010-2012) (Dec. 23, 2014); *Order Granting Motion of Phase I Claimants for Partial Distribution*, Docket No. 14-CRB-0008 SD (2010-2012) (Mar. 3, 2015). Multigroup Claimants' Objection to Partial Distribution of 2015 Satellite Funds to Certain "Allocation Phase Claimants"

The Judges’ ruling in the excerpt cited above makes clear that neither the “Program Suppliers” or “Devotional Claimants” are or represent “established claimants” in satellite proceedings, and the Judges are therefore *precluded* from awarding them a partial distribution of satellite royalties. Although the MPAA and SDC have previously been granted unrestricted partial distributions of satellite royalties, such partial distributions to the MPAA and the SDC cannot be reconciled with the standards most recently established by the Judges that are set forth above. Consequently, such prior partial distributions cannot be deemed precedent for any entitlement to partial distribution of satellite royalties to the “Program Suppliers” or “Devotional Claimants”, the identity of whom remain unclear.

CONCLUSION

In conclusion, the Judges should grant the motion only subject to the caveat that any partial distribution not be paid over to the yet-to-be-identified “Program Suppliers” and “Devotional Claimants”. Moreover, the figure of 60% of the pool should be reduced to a figure that equals no more than 60% of the aggregate pool after deduction for an appropriate award for the program suppliers category and devotional programming category.

Admittedly, such calculation is speculative because there *has been no prior satellite proceedings allocating funds* to the program suppliers and devotional programming categories. Notwithstanding, Multigroup Claimants would aver that a reduction of forty-percent (40%) of the 2015 satellite royalty pool would be consistent with cable allocations, thereby allowing a partial distribution (only to the remaining Allocation Phase Claimants) equal to sixty-percent (60%) of sixty-percent (60%) of the 2015 satellite royalty pool, i.e., a partial distribution of 36% of the aggregate royalty pool.

Respectfully submitted,

Dated: May 17, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May 2017, a copy of the foregoing was sent by electronic mail to the parties listed on the attached Service List.

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